

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

AKORN HOLDING COMPANY, LLC, *et al.*,¹

Debtors.

Chapter 7

Case No. 23-10253 (KBO)

(Jointly Administered)

Obj. Deadline: May 16, 2023

Hearing: May 19, 2023 @ 10:00 a.m.

Related Docket No.: 146

**OBJECTION OF INTERIOR SPECIALTY CONSTRUCTION, INC. AND SULLIVAN
CONTRACTORS, LLC TO NOTICE OF EXECUTORY CONTRACTS AND UNEXPIRED
LEASES THAT MAY BE ASSUMED AND ASSIGNED, PURSUANT TO SECTION 365 OF
THE BANKRUPTCY CODE, IN CONNECTION WITH THE SALE OF SUBSTANTIALLY
ALL OF THE DEBTORS' ASSETS, AND THE PROPOSED CURE AMOUNTS**

Interior Specialty Construction, Inc. (“ISC”) and its affiliate Sullivan Contractors, LLC (“Sullivan” and collectively with ISC, “ISC/Sullivan”), by and through its undersigned counsel, files its objection (“**Objection**”) to the *Notice of Executory Contracts and Unexpired Leases That May be Assumed and Assigned, Pursuant to Section 365 of the Bankruptcy Code, in Connection with the Sale of Substantially All of the Debtors’ Assets, and the Proposed Cure Amounts* [Dkt. 146] (“**Cure Notice**”) and, in support of same, respectfully submits as follows:

BACKGROUND

1. On February 23, 2023, voluntary petitions were filed by Akorn Holding Company LLC and its related Debtors and Debtors-in-Possession (together, the “**Debtors**”) under Chapter 7 of Title 11 of the United States Code (“**Bankruptcy Code**”) with the United States Bankruptcy Court for the District of Delaware (“**Court**”), which cases have been jointly administered.

2. George L. Miller (the “**Trustee**”) has been appointed as the Chapter 7 trustee.

¹ The Debtors in these chapter 7 cases, along with the last four digits of their federal tax identification numbers, and cases numbers are Akorn Holding Company LLC (9190), Case No. 23-10253 (KBO); Akorn Intermediate Company LLC (6123), Case No. 23-10254 (KBO); and Akorn Operating Company LLC (6184), Case No. 23- 10255. The Debtors’ headquarters is located at 5605 CenterPoint Court, Gurnee, IL 60031.

3. ISC and Debtor Akorn Operating Company LLC are parties to a Master Construction Agreement dated April 19, 2021 (the “**Agreement**”). Under the Agreement and various work orders (collectively, the “**Documents**”), ISC/Sullivan served as general contractor for numerous projects at Akorn’s manufacturing facility at 1222 West Grand Avenue, Decatur, Illinois 62522.

4. On April 20, 2023, the Trustee filed the *Motion for Entry of (I) an Order (A) Approving Bidding Procedures in Connection with Sale of Substantially all of the Estates’ Assets, (B) Scheduling an Auction and Hearing to Consider the Proposed Sale, and (C) Approving the Form and Manner of Notice Thereof; and (II) an Order (A) Approving the Sale, (B) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Certain Related Relief* [Dkt. 106] (“**Bid Procedures/Sale Motion**”).

5. On April 28, 2023, the Court entered an order [Dkt. 137] (“**Bid Procedures Order**”) approving the bid procedures aspect of the Bid Procedures/Sale Motion.

6. On April 11, 2023, the Trustee filed the Cure Notice, which included \$75,883.00 as the amount the Trustee believes is necessary to cure defaults under the Agreement (the “**Proposed Cure Amount**”).

OBJECTION

7. As a condition of any assumption and assignment of the Documents, whether to a successful bidder from this process or any other assignee, ISC/Sullivan is entitled to have all defaults cured. 11 U.S.C. § 365(b)(1)(A). The Debtors are currently in default under the Documents for failure to pay various charges currently due and owing.

8. ISC/Sullivan objects to the Proposed Cure Amount, as it does not reflect the correct cure amount under the Documents as of the date of any assumption and assignment (the “**Correct**

Cure Amount”). The Correct Cure Amount as of the Petition Date is \$372,684.10. Attached collectively as Exhibit 1 hereto are statements listing all amounts owed to ISC and Sullivan.²

9. ISC/Sullivan reserves its rights to object to any proposed assumption and assignment of the Agreement to a successful bidder or any other party absent identification of the proposed assignee, strict compliance with the adequate assurance of future performance requirements of § 365 of the Bankruptcy Code and the Bid Procedures Order, and ISC/Sullivan having sufficient notice and opportunity to be heard regarding any proposed assumption and assignment.

JOINDER AND RESERVATION OF RIGHTS

10. ISC/Sullivan reserves its rights to supplement this Objection and make such other and further objections as they deem necessary or appropriate, including with respect to any amended Proposed Cure Amount and the proposed order on the sale aspect of the Bid Procedures/Sale Motion.

11. ISC/Sullivan hereby joins any other objections filed by the Debtors’ contract counterparties to the Cure Notice to the extent such objections are not inconsistent with the relief sought herein.

² Additional documentation in support of the Correct Cure Amount is available upon request to counsel.

Dated: May 16, 2023
Wilmington, Delaware

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